

Dec. 13, 2003

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RE: State/AR-01/96

USA Committee for IAVAAN Comments on 22 CFR 96

The USA Committee for the International Association of Voluntary Adoption Agencies and NGOs (IAVAAN) is a Washington, D.C. based 501 (c) 3 charity with a broad mission, including improving intercountry adoption services. As its name suggests, the USA Committee is the US affiliate of IAVAAN, an organization formed in 1991 which has observer status at the Hague Conference on Private International Law. Persons representing IAVAAN were present at the meetings convened by HCPIIL in 1991, 1992, 1993, 1994 and 2000. Several of those present at The Hague, or their agencies, participated in one or more of the drafting, diplomatic or working sessions called by HCPIIL. For more information about IAVAAN, please visit www.iavaan.org.

The following comments of the USA Committee for IAVAAN represent a consensus viewpoint about the draft Regulations, 22 CFR Part 96, published in the *Federal Register* on Sept. 15, 2003.

We are commenting generally on those portions of the Regulations or the Preamble which we believe need clarification, change or deletion.

To the extent possible, we are commenting on specific sections of the draft Regulations rather than the Preamble, but in several instances we could find no parallel content in the draft Regulations which covers the same items or relates to the same questions raised by the Preamble.

We do wish to express our gratitude to the Department for extending the comment period by an additional 30 days; however, we urge that the Department move the process forward, with no reissue of the Regulations pertaining to 22 CFR Part 96.

PREAMBLE

P. 54071. In columns two and three, the Department requests comments on several questions. Some of the questions are not appropriate for us to comment on. We are commenting on questions 3, 4, 5 and 7.

Question 3. We believe that the estimated cost should be \$25,000 to \$35,000. This is an all-inclusive cost, including travel.

Question 4. In order to arrive at an estimate of pass-through costs forwarded to foreign entities, as a proportion of rendering adoption services, an estimate of total costs – including variable travel and accommodation expenses – needed to be arrived at. The following estimates are provided and do not include pass-through costs forwarded to foreign entities for travel and accommodations.

For all countries listed below, pass-through costs were a percentage of total costs.

For Belarus, pass-through costs were 33 percent.

For Bulgaria, pass-through costs were 33 percent.

For China, pass-through costs ranged from 27 – 50 percent for the agencies sampled.

For Colombia, pass-through costs ranged from 19 – 39 percent, depending on the Colombian agency utilized.

For Guatemala, pass-through costs averaged 57.5 percent for the agencies sampled.

For Kazakhstan, pass-through costs were 26 percent.

For Russia, pass-through costs averaged 33.5 percent for the agencies sampled.

For The Ukraine, pass-through costs averaged 37 percent.

Question 5. Travel and accommodation costs vary significantly, depending on many factors. Some use one or more approaches to economize, including using frequent flier miles, taking flights with additional stops or choosing flights at inconvenient hours and fly coach or economy class. Others do not use such approaches and may not only decide that both parents will travel, whether required to or not, but also may have the children who are currently in their family accompany them. As for accommodations, there are two main options available in some of the major countries of origin. Families may stay in hotels and pay for extra meals or in apartments, where meals are often included. The cost of staying in apartments is generally less than half the cost of a hotel alone. Finally, among other considerations, is the fact that travel at some times of the year are more expensive than at other times. These variables account, at least in part, for the hesitation agencies have in citing travel and other in-country costs when they list fees and charges by country.

The information below is based on a sample of agencies. Note that the ranges stated below differ significantly, because one adoption case may involve a single person who travels alone and takes advantage of every potential economy. If two people travel and their costs are the upper end, their total expenses may be well more than twice that of the single person who economizes.

Bulgaria. Two trips are required. The first trip is three days and both parents must travel. The second trip can be made by one parent and is three-four days. Travel is \$800 - \$1,300 roundtrip per person. Travel costs, therefore, range from \$2,400 - \$5,200, depending on the choices made by the parents, time of year traveling, etc. Hotels and meals range from \$80 - \$110 per day. Those costs, therefore, range from \$800 - \$1,540.

Total travel and accommodations for Bulgaria: \$3,200 - \$6,740. Taking the maximum travel costs, the proportion for travel and accommodations would be 26 percent.

China. One trip is required. The trip is 12 days. Some single parents adopt from China and these prospective parents may choose to travel alone, thus cutting costs in half. Travel is \$800 - \$1,600 each, roundtrip. Travel inside travel, including housing, breakfast and lunch, varies by distance and province, but averages \$1,100 each. Total travel and accommodations for China: \$1,900 - \$5,400. Taking the maximum travel costs and accommodation (T&A) costs, the average for the agencies sampled would be 31.5 percent.

Colombia. One trip is required. Some singles, who may travel alone, thus cutting costs in half. The trip is two weeks. Airfare, roundtrip, is \$800 - \$1,300 each. Lodging and food is \$150 - \$200 per day each. Total travel and accommodations for Colombia: \$2,900 - \$8,800. Taking the maximum T&A costs, using it would be 36 percent.

Guatemala. Prospective adoptive parents can choose to apply for an IR-3 visa for the child and if they do, two trips of three days each will be required. The other option, an IR-4 visa, requires one trip of three days. As with some other countries, singles may adopt and if they travel alone, they can cut costs in half. Airfare is \$800 - \$1,300 each, roundtrip. Lodging and food are \$100 per day. Total travel and accommodations for Guatemala: \$1,900 - \$7,600. Taking the maximum T&A costs, the range among agencies sampled is six - 25 percent.

Kazakhstan. One trip is required. Forty days is required to complete the process. Airfare is \$1,500 - \$2,000 each, roundtrip. Lodging and meals average \$120 per day. Total travel and accommodations for Kazakhstan: \$12,600 - \$13,600. Taking the maximum T&A costs, it would be 52 percent.

Russia. Two trips are required. Singles may adopt, travel alone, and reduce costs accordingly. Total time in Russia is three weeks. Airfare to Russia is \$1,000 - \$2,000 each, roundtrip. Travel within Russia is \$200 - \$700 each. Lodging and meals are \$50 - \$150 per day. Total travel and accommodations for Russia: \$3,450 - \$15,700. Taking the maximum T&A costs, it would be 36 - 48 percent, with the average 42 percent.

The Ukraine. One trip is required. Singles may adopt, travel alone, and reduce costs accordingly. Total time in The Ukraine is three weeks. Airfare to The Ukraine is \$800 - \$1,800 each, roundtrip. Travel within the Ukraine and to Warsaw, Poland, roundtrip, to obtain the visa for the child is \$200 - \$425 each. Travel for the child to Warsaw and return, \$19 - 122, depending on the age of the child. Lodging and food are \$65 - \$115 per person per day. Total travel and accommodations: \$2,384 - \$10,252. Taking the maximum T&A costs, it would be 40 percent.

Question 7. In respect to question 7, the first cost agencies mention is the cost of accreditation. It is not known what fees the accrediting entities selected by State will charge and what the total cost will be to agencies, including the accreditation fee and cost

of staff or consultants to compile the requisite documents, work with the accrediting entity, respond to complaints, etc. The estimate of the agencies that have looked at the proposed Regulations and the additional tasks assigned to accrediting entities, including fees for the Complaint Registry, is that fees for Hague accreditation will be at least at the level and perhaps substantially higher than fees currently charged by the only accrediting entity serving agencies involved with intercountry adoption. However, in order to provide some estimate for the Department, then if total costs of the initial accreditation are similar to what agencies incurred to be accredited by the Council on Accreditation, those total costs would range from \$45,000 - \$60,000 for a medium-sized agency doing about 120 intercountry adoptions annually. This computes as \$95 - \$165 per adoption case, a small fraction of the estimated total costs for an intercountry adoption of \$25,000 - \$35,000. For the second accreditation, because much less staff time is expended by the agency to compile documents, change policies to come into compliance, etc., the total cost declines to no more than \$30,000, and the cost per adoption case to \$85.

We are not providing the kind of detailed data that would be most useful to the Department on the cost of various kinds of insurance because, to the best of our knowledge, no insurance company has been willing to quote as yet, based on the information provided in the draft Regulations. This is not to say that certain cautionary notes cannot be sounded. For instance, one of the other national organizations says that Directors & Officers' coverage for an IL agency doing fewer than 25 placements a year costs of \$30,000 a year. In our survey of USA Committee members, one agency which does four times the number of placements as the IL agency said their premium is less than \$5,000. One quote for one agency, whether the agency is a USA Committee member or a member of another national, does not make for statistically sound data. Nor are the numbers provided by another national, as Appendix B to its Comments, significantly more useful. A mere gathering of numbers, even if the response rate in the underlying survey were acceptable, is not useful when an "average premium" is given. For instance, an average premium of \$28,860 is given but there is no context such as: amount of coverage; deductibles; limitations; cases processed per year; exclusions; claims history of the agency; impact of states' "charitable immunity statutes;" countries of origin of children placed by the agency. Without basic information, showing a premium provides no basis for comparison and is likely to be highly misleading. The Department should either do its own careful survey or tell the public that there is at present no reliable data about the costs of insurance related to intercountry adoption. We are also concerned that another national has, in its attempt to provide well-meaning advice to the Department, that prospective adoptive parents or adoptive parents purchase "adoption insurance" as "another source of monetary relief." The USA Committee and the agencies participating in the Comment process agree that at one time prospective adoptive parents could purchase insurance for domestic adoptions. This insurance, which is to the best of our knowledge no longer available, protected against expenses in the event the birthmother changed her mind. Prospective adoptive parents could purchase one of three flat-fee policies. Such insurance is currently unavailable, not just for intercountry adoptions, but also for domestic adoptions. Finally, in the context of discussing charitable immunity statutes, another national discusses a state with a \$250,000 limit on claims. We do not wish to get into an extensive discussion in these

Comments about the amount of insurance that we consider adequate, except to say that we believe that \$250,000 of coverage is not sufficient.

Most agencies already retain personnel that meet the requirements of Sec. 96.37.

Costs of providing mandatory training depends on how that training is provided. Some agencies have well-developed, online correspondence courses and materials used as texts, and this training is used for prospective adoptive parents who do not live in geographic proximity to one of the agency's offices. Others, where possible, tend to have traditional classes. For the online correspondence training, the total cost to the agency is about \$25 per couple or individual or couple. For traditional training, the cost to the agency currently is about \$100 per client per year. Agencies working on this USA Committee response to the Department do not believe their training costs, which are included as part of their overall fee to adopting parents, will be substantially increased by compliance with Sec. 96.48. Since the choice of the type of training to be provided will be the agency's, we agree with another national that said in its Comments that some agencies would have no additional costs. On the other hand, the Comment says, in part: "Those [agencies] who provide training, but which is not mandatory, stated it would increase costs \$200- \$500 per family." If there is a range of \$25 per client to \$500 per client, it would seem reasonable to have the Department explore putting a ceiling on the costs of such training to families at a reasonable mid-point, say \$100.

P. 54080. In columns one and two, there is a discussion of the fact that the Department has decided to decline to permit "deeming." The agencies associated with the USA Committee for IAVAAN participating in our review of the draft Regulations include agencies which have undergone voluntary accreditation for Intercountry Adoption Services by the Council on Accreditation (COA), including re-accreditation. It is the view of those agencies that the Department is incorrect in stating that "...its regulatory standards differ substantially from other standards...." It is the view of these agencies that COA, the only existing voluntary accrediting body for Intercountry Adoption Services, can and should comment in detail about the extent to which the regulatory standards duplicate COA standards. Speaking for those who have undergone accreditation, including site visits, it is the view of the agencies participating in drafting these comments that there is significant duplication, duplication which we estimate to be at least 80 percent. We acknowledge that there are regulatory standards proposed in subpart F which are not duplicative. We believe the appropriate resolution is neither to approve "deeming" nor to ignore the fact that a substantial portion of the regulatory standards are included in the COA standards. We believe the answer is for the final Regulations to provide that, to the extent that regulatory standards are included in any voluntary accreditation standards, those standards do not need to be included in a new accreditation study. In other words, if 80 percent of the regulatory standards are met by the COA Intercountry Adoption Services requirements, then any accreditation for purposes of meeting Hague accreditation undertaken by COA need only cover the unduplicated 20 percent of the regulatory standards. We believe that the precise percentage to be determined to be duplicative should be decided in negotiations between State and COA, if COA applies to be an accrediting body. We believe that the

Department should take this approach for several reasons. First of all, federal regulations should not duplicate other regulations. Extra paperwork and approval processes are not in the public interest. Second, unnecessary paperwork and approval processes add substantially to the costs of accrediting agencies. Third, unnecessary paperwork and approval processes require additional time and utilization of resources by accrediting entities. Fourth, adding unnecessary costs which must be passed through to those who are adopting, as a part of the fees for accreditation paid by agencies, is not in the interest of citizens. Fifth, adding unnecessary additional time and expending unnecessary additional resources will drain accrediting entities and reduce their capacity to accredit all applicants who must be accredited or who voluntarily apply to be accredited. Sixth, draining resources of accrediting entities will unnecessarily delay the time when all accrediting is completed and the Department can deposit the instrument of ratification at The Hague. Seventh, delaying ratification can result in potential disqualification to adopt by some U.S. agencies by countries that have fully implemented the Convention, thus denying children in need of families U.S. families and denying U.S. families the opportunity to reach out in a humanitarian fashion to meet those children's needs.

P. 54082. In column two, the Preamble says that Sec. 96.35 is intended to "...mandate disclosure of any other businesses or activities currently carried out by the agency or person..." and cites as an example "...distributing pornography or operating a Web site that contains pornography, whether such activity is legal or not..." We agree that any agency or person which has been involved in "distributing pornography or operating a Web site that contains pornography" should be disqualified. We do not agree that only those agencies or persons which are "currently" carrying out such businesses or activities should be disqualified. We believe that any past involvement with pornography, for instance, whether legal or not, should result in automatic disqualification and will make a specific recommendation as to changing Sec. 96.35 in our comments on the draft Regulations.

P. 54086. In column two, seven lines from the bottom, the sentence "Generally, complaining parties, other than Federal agencies, public bodies, law enforcement or licensing authorities or foreign Central Authorities must first file their complaints with the agency or person providing adoption services and, if the agency or person is a supervised provider, with the primary provider in the case." We are concerned about the word "Generally" because we believe it creates an inappropriate exception. We realize that the final Regulations may not contain this sentence and the word "Generally," but we wish to make clear that the final Regulations should not provide for any exception. In column three, we note that "When an accrediting entity has completed its investigation, it must provide written notification to the complainant..." We are concerned that there is no specific requirement that the complainant be identified by name. A complainant might use the services of an attorney in an attempt to remain anonymous, or use a pseudonym. We believe the final Regulations should state clearly that no anonymous complaints may be filed, nor may complaints be filed by an attorney, agent or other entity on behalf of a complainant to allow said complainant to remain anonymous. Nameless accusers should not be allowed under the final Regulations.

P. 54088. In column three, the second full paragraph discusses the composition of the working group that the Department intends to convene and mentions that "...other Federal government bodies, including DHS..." would be part of that working group. We wish to remind the Department that the Congress, in enacting the IAA, specifically excluded the U.S. Department of Health and Human Services (DHHS) from any role in carrying out the IAA. For that reason, we believe that the Department should take note of Congressional intent and limit participation only to the U.S. Department of Justice.

DRAFT REGULATIONS

96.5 Because of the extra time provided for analysis of the Regulations as well as the opportunity to review the Comments filed by some of the significant organizations representing agencies doing intercountry adoptions, we include with the USA Committee for IAVAAN's Comments our views on certain of the other national organizations. One organization suggests amending 96.5 (a) by adding the words "or proposed organization" after the word "organization" and before the word "described." The intent of the comment is to encourage competition and to preserve options for organizations that may be "in formation." Any organization that is still in formation does not have the accrediting experience that should be required. It is difficult to understand how one can protect the rights of organizations not yet in existence.

96.13 We note that if an agency or provider performs a home study or a child background study, these activities do not require accreditation, approval or supervision. We note also that if an agency or person provides a child welfare service which is not one of the six adoption services defined in Section 96.2, the agency or person is similarly not required to be accredited, approved or supervised. In this context, we wish to point out that agencies or persons do provide the child welfare service known as "post-adoption services," and that any such services, including reminding the adoptive parent or adoptive parents of their need to file post-adoption reports with the sending country, are not "adoption services" under Section 96.2. A vast majority of all intercountry placements currently take place with sending countries that require adoption in the country of origin. At the point where an adoption takes place, subsequent services are "post-adoption services," and are child welfare services.

96.24 (c) and (d). We agree with the language in (c) that "...at least one of the evaluators [must] participate in each site-visit." We believe the language should be changed to require that if only one evaluator participates in a site-visit, that person shall be the evaluator with "expertise in intercountry adoption." Also, (c) provides that the site visit may include "...interviews with birth parents, adoptive parent(s), prospective adoptive parent(s), and adult adoptee(s) served by the agency or person...." Since there are instances where agencies have changed their services and no longer deliver domestic adoption services, or they may have delivered services in the past to clients who lived outside the U.S., several questions need clarification. Since this is a "site visit," is the agency expected to pay for the costs of an evaluator or evaluators going "off site" for these interviews if it involves a different city in the state or a different state? Secondly, many agencies have no contact with past clients, especially birth parents who may have

requested anonymity. How is that to be dealt with? In respect to adoptions from other countries, it is possible that some of the birth mothers then resident in other countries now live in the U.S. What is the intention in such a case?

We believe that the language in (d) should be revised to read as follows in order to remove a level of inappropriate discretion currently provided to the accrediting entity: "Before deciding whether to accredit an agency or approve a person, the accrediting entity shall advise the agency or person of any deficiencies that may hinder or prevent its accreditation or approval and defer a decision to allow the agency or person to correct the deficiencies."

96.31 (a). We strongly oppose allowing agencies that only have non-profit status under any state law to qualify as a non-profit agency. Only agencies which meet IRS code IRC 501(c) 3 requirements should be considered providers. We believe (a) should be revised by inserting a period after the word "amended" and deleting the rest of the sentence.

96.33 (g). We believe that this "independent professional assessment of the risks" means the assessment by the insurance agent and that this clarification should be added to (g).

96.35 (c) (5). As explained above, we believe that past and current disqualifying activities should be part of (5). We suggest that the words "have been or" should be inserted between the words "that" and "are."

96.37 (d) (1). Although the USA Committee recognizes the value of higher education for those involved in intercountry adoption, we share the views of another national, which has commented: "Many masters's programs [in social work] do not specifically address the topic of adoption." We recognize that this is a concern that needs to be addressed by the Council on Social Work Education, and is beyond the scope of the Department. However, for those MSWs who have little or no training in adoption, and perhaps no training in intercountry adoption, the usefulness of having supervisors without knowledge of the field supervise those who do have such knowledge is somewhat limited.

96.38 (b) (2). We agree that it is important that the training of social service personnel include, as for example in (2), information about some of the negatives related to adoption. We believe that it is just as important that this training include information about the positives of adoption, the benefits related to adoption and that specific language should be added to 96.38 so that social service personnel are given balanced training reflecting not just negatives but also positives.

96.38 (c). We strongly endorse the minimum requirement of 20 hours of training each year for employees who provide adoption-related social services as described in this paragraph. We do not believe it is in the best interest of any aspect of intercountry adoption services to reduce this requirement by 25 percent, to 30 hours over a two-year period, as another national has suggested. As one of the USA Committee member agency executives put it, "more training is better." And this executive is just as aware as

those affiliated with the other national of the savings in personnel costs if that part of her budget line for training can be reduced by 25 percent.

96.39 (b) (2). We believe that providing data on the number of parents who apply is inappropriate, in that this is proprietary information. For that reason, we request that (2) be deleted.

96.40 (b). We believe that it would be useful, as does another national, if the word "estimated" were inserted before the word "expenses" in line six of this paragraph. "Fees" are usually set in advance and known within a reasonable degree of certainty. "Expenses" can vary widely, even within the same program of the same agency, depending on a range of factors, some of which are outside the control of the agency. Inserting "estimated" helps make clear to applicants that there is a degree of uncertainty that needs to be understood at the very outset of exploring a potential intercountry adoption.

96.40 (f) (3). We agree with another national, that has recommended the deletion and addition of words resulting in this new language: "it provides written receipts to the adoptive parent(s) for total fees collected directly by the agency in the Convention country and retains copies of such receipts." We note that it is not correct to state, as the other national does, that "The word 'prospective' should be struck from this sentence since by this time the clients are adoptive parents and no longer prospective." In the majority of cases, this is true, but many children are not adopted until they return to the US. The sense of our agreement, therefore, is summarized in this statement from a USA Committee agency executive: "I can't be required to give a receipt for a financial transaction ... which occurs overseas and of which I am not a party."

96.41. This section does not specifically require that complaints must be accompanied by the name of the complainant. We request that the section be amended to reflect the fact that anonymous complaints may not be filed.

96.43 (4). We believe that just as it is important, in (vi), to know the names of the agencies or persons that handled the adoption, so also is it important to know the name of the individual or individuals who did the home study. Accordingly, we request that a new (vii) be added which reads "the name or names of the individual or individuals who did the home study for the adoptive parent or adoptive parents;". The present (vii) will need to be renumbered as (viii).

96.45 and 96.46. We note that both of these sections use the word "supervised" and wish to point out that the use of this word has important ramifications for agencies and persons because of the distinction maintained by the Internal Revenue Code concerning employees and independent contractors. The differentiation which is maintained in the Internal Revenue Code should be reflected in the final Regulations. The language of the final Regulations ought not to prevent an agency or a person from employing independent contractors. It is our view that since supervised providers are not mentioned in the IAA, some other terminology should be utilized to have the effect intended by the

Department in the draft Regulations. We understand that liability is extended to agencies and persons if agencies and persons are effectively engaged in "supervising."

96.45 (c) (1). In this section, we note that (1) discussed "...contracted adoption services..." a term implying to us the understanding by the Department that agencies and persons use "contractors," including "independent contractors," to provide certain services. In order to maintain the flexibility to use these sorts of contractors, the issue of "supervision" and the need for alternative language, as stated above, needs to be addressed by the Department.

96.46. Although this Section pertains to the use of supervised providers in other Convention countries and the word "physician" or "physicians" does not appear in the Section, another national has commented on the fact that it is often difficult to find good doctors and get good medicals. The USA Committee agrees with this comment and believes that one of the ways prospective adoptive parents and all others involved with a proposed adoption may get the best interpretation of what data has been gathered is, at least in cases involved US citizens, for those prospective adoptive parents to fax materials they receive about their child to one of the many international medical clinics specializing in intercountry adoptions.

96.49 (k). We agree with the intent of this paragraph, as does another national, that prospective adoptive parents should have at least a week to review the medicals.

96.50 (a). The phrase "...if possible, in the company of the prospective adoptive parents" is inappropriate for at least two reasons. First, there is nothing in the IAA to suggest that "escorting," a practice that has been successfully used for many decades by those who have adopted children from the Republic of Korea, is not equally as appropriate as the alternative, when the prospective adoptive parent or parents travel to the sending country to accept the transfer of the child. Second, there are many appropriate reasons why "escorting" is preferred over traveling to the sending country by prospective adoptive parents, including these: higher costs; political insecurity such as crisis, armed conflict; the existence of other children in the home (complicating the parents' travel); health problems or handicap of the adoptive parents; parents' fear of flying; time required and uncertainties about administrative and other delays; dangers of corruption of professionals by adoptive parents or financial pressure on parents in the country of origin. We request that (a) be amended by inserting a period after the word "used" and that the rest of the sentence be deleted. Similarly, we request that any other references which suggest that "escorting" is not as appropriate an option as traveling be deleted from the draft Regulations.

96.50 (e) (2). We strongly object to the idea that any child ever be returned to the child's country of origin once a child who has been placed for adoption has arrived in the United States, even as a last resort. Among the agencies discussing this section were many with decades of experience who could not imagine a circumstance where it would be determined to be in the child's best interest for a child to be returned. We ask that (2) be deleted.

96.51 (a). Again, there is language which suggests that "escorting" is less desirable than traveling. The phrase "and, if possible, in the company of the adoptive parents" should be deleted.

96.54 (g). We agree that it is important to prepare the child for transition by discussing the child's likely feelings that are negative, but it is also important to discuss the child's likely feelings that are positive. We request that the Department insert language to reflect the positive feelings, the fact that the child will be gaining a permanent, legal family, and the fact that most children eventually make other adjustments.

96.54 (h). Again, there is language which suggests that "escorting" is less desirable than traveling. The phrase "and, if possible, in the company of the adoptive parents" should be deleted.

96.60 (b). We recognize that it may be necessary for an accrediting entity to choose which agencies and persons it will accredit for a period other than four years but we believe the criteria should be specified in the final Regulations and should be as follows. First, an adjustment in the fee for accreditation should be made so that if an agency is accredited for three years, the fee will be less than for four years. Similarly, if an agency is accredited for five years, it would be appropriate for the fee to be more than for four years. Second, we believe that there should be provision made for agencies or persons to volunteer for three, four or five year accreditation or approval. Third, we believe that if the accrediting entity chooses which agencies or persons will be accredited or approved for three, four or five years, the choosing will be done by a random process.

96.77. This Section has raised two different concerns which the Department needs to address. First, the USA Committee, as well as another national, believe that too much power is given to accrediting entities. It appears that not only can the accrediting entity suspend or cancel the accreditation or approval of the agency or person. This is an appropriate role, in our opinion. However, we do not believe it is appropriate for the accrediting entity to play any role in determining whether and how to transfer pending cases, papers, etc., to another accredited agency or person. If, as is the case with COA, the accrediting entity has members that are agencies or persons, there would be a possible conflict of interest. The accrediting entity could decide to transfer cases, papers, etc., to a member. Or, conversely, the accrediting entity could decide to transfer cases, papers, etc., to a state archive – and with states potentially being accrediting entities, this could be a double conflict of interest. We believe legal staff at the Department should redraft the Section to address these potential problems. Second, some concern has been expressed that, for instance, an agency originally accredited by an entity decides that they want to switch to another accrediting entity when the time for reaccreditation arrives. Agencies should be permitted, without prejudice, to switch to another entity and be permitted to take their files with them.